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BEFORE THE ARIZONA CORPORATI

IN THE MATTER OF THE APPLICATION)
OF WAYWARD WINDS FOR A CERTIFICATE)
OF CONVENIENCE AND NECESSITY TO)
PROVIDE WATER SERVICE IN COCHISE)
COUNTY, ARIZONA.)

DOCKET NO.
W-20553A-08-0467

EVIDENTIARY
HEARING

At: Tucson, Arizona

Date: January 23, 2009

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1 BE IT REMEMBERED that the above-entitled and
 2 numbered matter came on regularly to be heard before the
 3 Arizona Corporation Commission, in Room 222 of said
 4 Commission, 400 West Congress, Tucson, Arizona, commencing
 5 at 10:00 a.m., on the 23rd day of January, 2009.

6

7

8 BEFORE: BELINDA A. MARTIN, Administrative Law Judge

9

10 APPEARANCES:

11

12 For the Arizona Corporation Commission Staff:

13 Mr. Kevin Torrey
 14 Staff Attorney, Legal Division
 15 1200 West Washington Street
 16 Phoenix, Arizona 85007

16 For the Applicant:

17 Mr. N.D. Bales
 18 5416 East Highway 181
 19 Pearce, Arizona 85625

20 KATE E. BAUMGARTH, RPR
 21 Certified Reporter
 22 Certificate No. 50582

22

23

24

25

1 ALJ MARTIN: Good morning. This is the time set
2 for the hearing in the docket No. W-20553A-0467 in the
3 matter of the application of Wayward Winds for a
4 Certificate of Convenience and Necessity, and welcome to
5 the Arizona Corporation Commission.

6 My name is Belinda Martin, and I am the
7 administrative law judge assigned to this matter. I'm
8 happy you are here.

9 MR. BALES: Thank you.

10 ALJ MARTIN: I would like to do something called
11 taking appearances. As we mentioned, there is a little
12 green button on the microphone. Please introduce yourself
13 on behalf of the applicant.

14 MR. BALES: I'm Mr. Bales.

15 ALJ MARTIN: Thank you. Mr. Bales, could you
16 give your full name for me?

17 MR. BALES: Narvol.

18 ALJ MARTIN: What is that?

19 MR. BALES: N-a-r-v-o-l.

20 ALJ MARTIN: Thank you.

21 And on behalf of Staff?

22 MR. TORREY: Your Honor, Kevin Torrey appearing
23 on behalf of Commission Staff.

24 ALJ MARTIN: Thank you very much.

25 Before we begin, I would like to ask if there are

1 any preliminary issues that need to be discussed before we
2 start in earnest?

3 Mr. Bales, do you have anything you need to
4 discuss before we begin?

5 MR. BALES: No, I don't think so.

6 ALJ MARTIN: Okay. Mr. Torrey?

7 MR. TORREY: Nothing from Staff, Your Honor.

8 ALJ MARTIN: All right. Thank you.

9 There is an issue that I noticed going through
10 the file and the documents.

11 Mr. Bales, as part of the notice of the hearing,
12 the one that you published -- do you remember?

13 MR. BALES: Yes.

14 ALJ MARTIN: Okay. You sent a letter in saying
15 that there are no customers now for the service area so
16 there is no certificate of mailing.

17 The problem is that the notice required -- this
18 notice or the procedural order required notice to be
19 mailed to the property owners, not only any customers.
20 And the reason for that is, even though you probably know
21 all the property owners and they know all about this, but
22 for Commission purposes we have to be satisfied that
23 adequate notice was given of this hearing in order to give
24 them a chance to respond. Because what happens is if we
25 grant a CC&N, it technically ties up their properties, and

1 we can't do that without being given a chance to respond.
2 So that is a problem that I see.

3 Now, let me -- there were notices, one, the
4 application, that I do notice was sent to the property
5 owners.

6 MR. BALES: Yes.

7 ALJ MARTIN: And that is fine. And in the
8 procedural order there was that long notice that you
9 published; right?

10 MR. BALES: Yes.

11 ALJ MARTIN: So the publication was fine, but
12 what needed to happen was the mailing of notice also
13 needed to go to the property owners.

14 So with Mr. Torrey's permission -- and I will
15 give you a chance to speak on this in a minute,
16 Mr. Torrey -- what I would like to do is go ahead and
17 proceed with the hearing today, but after the hearing is
18 over I will issue another procedural order directing
19 that -- it will be a different notice that will have to
20 reflect the hearing was held and they can request a
21 hearing if they want to and all that other stuff. I know
22 that won't happen, but I have to cross my Ts and dot my Is
23 before I can issue an order.

24 So the procedural order will have another notice
25 that has to be mailed to the property owners before I can

1 even issue an opinion to the Commission. Okay?

2 MR. BALES: Yes, ma'am.

3 ALJ MARTIN: And I'm sorry about that. It's just
4 one of our many loopholes.

5 Mr. Torrey, does that process sound all right to
6 you or would you prefer not to proceed?

7 MR. TORREY: Your Honor, I do believe that is
8 sufficient.

9 ALJ MARTIN: Okay. All right. Thank you very
10 much. And I am, again, sorry there are so many loopholes,
11 but it's my job.

12 So what is going to happen now is I will have you
13 first -- we will give everyone an opportunity to state an
14 opening statement, if they wish. You don't have to, but
15 you may. But then I will have you take the stand in order
16 to testify on behalf of the company. And I will ask you a
17 couple of underlying questions about your position with
18 the company and that sort of thing. And then Mr. Torrey
19 will ask you some questions and then I may have some
20 questions.

21 And then when you are done, Staff witnesses will
22 come up and testify. And then you will have an
23 opportunity to ask them whatever questions you have and I
24 will ask some. And then it may be that because based on
25 different testimony I may need to recall you to ask an

1 addition question. That is the process we will follow
2 today.

3 Do you have any questions about any of this
4 silliness?

5 MR. BALES: Well, I would like Mr. MacKay to do
6 the talking with the paperwork and such.

7 ALJ MARTIN: All right. Very well. If you wish
8 to have him called as a company witness, you can do that.

9 All right. Very well, then. Do you have an
10 opening statement that you would like to make?

11 MR. MACKAY: No. I just appreciate everybody's
12 hard work and due diligence through this last year. It's
13 been quite an adventure.

14 ALJ MARTIN: That is a great way to put it, quite
15 an adventure.

16 Mr. Torrey, any opening?

17 MR. TORREY: No, Your Honor.

18 ALJ MARTIN: Okay. Very well. Then in that
19 case, Mr. Bales, if you would call your first witness.

20

21

DAVID MACKAY,

22 called as a witness herein on behalf of the Applicant,
23 having been first duly sworn, was examined and testified
24 as follows:

25

ALJ MARTIN: What is your name?

1 THE WITNESS: David MacKay, M-a-c-K-a-y.

2 ALJ MARTIN: Mr. Bales, if you could, please --

3 Mr. Torrey, do you have an objection to my asking
4 him some introductory questions?

5 MR. TORREY: I do not, Your Honor.

6 ALJ MARTIN: Okay. It just makes this easier for
7 Mr. Bales and Mr. MacKay.

8

9

EXAMINATION

10

11 BY ALJ MARTIN:

12 Q. Mr. MacKay, could you please state a business
13 address, if you have one?

14 A. 5416 East Highway 181, Pearce, P-e-a-r-c-e,
15 Arizona, 85625.

16 Q. And what is that address?

17 A. It's just Bales Auto. It's a business right
18 there.

19 Q. Okay. And what is your interest in the
20 proceedings today?

21 A. I've actually just been helping Dean go through
22 the process. I'm sort of trying to learn the process
23 myself with him.

24 So I'm just sort of -- I do a lot of work with
25 him and for him and vice-a-versa. So I am just sort of an

1 entity that is helping him out. I know he gets nervous
2 and stuff like that.

3 Q. Okay. Do you have sufficient knowledge of the
4 information contained in the Company's application?

5 A. I have actually been the one that did it all.

6 Q. Okay. Then I guess so.

7 ALJ MARTIN: All right. Very well. Then,
8 Mr. Torrey, if you would like to ask questions.

9 BY MR. TORREY: I guess I can do that, Your
10 Honor.

11

12

CROSS-EXAMINATION

13

14 BY MR. TORREY:

15 Q. Mr. MacKay, can you give us a little bit of
16 background on how the need for this water company came
17 into being?

18 A. Well, Mr. Bales and myself were approached by a
19 Mr. Moffitt who had interest in this 120 acres down where
20 the Wayward Winds well is. And he approached Mr. Bales
21 about wanting to purchase the well and wanting to see if
22 he could be a provider for water.

23 And in the beginning of the process it was for
24 homes. It was a plat plan for homes and things.

25 Well, the markets have turned and everything, so

1 they found out that the land that this well is on is prime
2 land for grape vineyards. They had a geologist and all
3 that thing and they found it was a perfect place to have
4 vineyards.

5 So he is basically selling the land for people --
6 for vineyards. And they are in five-acre parcels. That
7 is where it started to get -- you know, that is how it
8 came about. It basically turned from a subdivision into
9 for grape vineyards for various people.

10 And so Mr. Bales purchased the well, and we put
11 an infrastructure -- started an infrastructure within the
12 120 acres. And then everything obviously has slowed down,
13 so we are sort of on a holding pattern until -- I think
14 Mr. Moffitt is looking into about the CC&N, if it's
15 approved and things like that about that direction. But
16 we are sort of stagnant right now where nothing is going
17 on, but obviously we are going through this process.

18 Q. So let me make sure I'm understanding correctly.

19 There are 120 acres totally?

20 A. Yes, sir.

21 Q. And entire development is 120 acres?

22 A. Yes, sir.

23 Q. And it's owned by this Mr. Moffitt; right?

24 A. It's not all. He has sold off one portion where
25 we started an infrastructure, and the man has cleared

1 areas. He is on hold, I think, because of financial
2 reasons. But there is one section that we already have an
3 infrastructure in, lines and everything -- no meters yet,
4 but we have that ready to start to get it to go.

5 But Mr. Moffitt owns the remaining amount. I
6 think there are only about 10 acres that are owned. So I
7 think he is still in possession of 110 of the acres.

8 Q. So as of right now you don't have anybody right
9 now who is waiting to receive service for their vineyard
10 property?

11 A. Well, we did, and that gentleman just hasn't
12 come. We try -- he lives in Yuma, and we are trying to --
13 we periodically send a notice to him of what is going on,
14 and he sort of has -- hasn't said anything.

15 But he has actually started. He has put some
16 money in in clearing and starting to put lateral lines in
17 and things like that. So it's surprised Mr. Bales and me
18 that he hasn't done anything yet, and I can only surmise
19 that it's financial reasons with what is going on in the
20 country.

21 Q. So Mr. Bales purchased the well; is that correct?

22 A. Yes.

23 Q. And then you mentioned that there were pipes in
24 place or that you --

25 A. There wasn't anything in place. The only thing

1 that was in place for the well was a storage tank, but he
2 had purchased a pressure tank and then a four-inch line.
3 We put a lot of four-inch lines and ladders and things
4 like that.

5 So the only thing there was a pump. He put a new
6 submersible pump in it. He cleaned the well out. We had
7 to put new casings in the well. In other words, we had to
8 get the well up to specs.

9 Q. So are you telling me that this 120 acres is sort
10 of master planned with the idea that all 120 acres will be
11 used for vineyard --

12 A. Yes, sir, that is the impression we are under.

13 There is a possibility, and we are not sure
14 because Mr. Moffitt has sort of changed here and there,
15 but the last that we had talked to him it was basically
16 master planned for just the vineyards.

17 He did have a newsletter where he was sort of
18 trying to use the idea of selling five-acre parcels where
19 a family or a couple could build a small home, whether
20 it's a manufactured home or whatever, and then have that
21 as a business, almost like an airpark type of idea.

22 But he hasn't gone that path anymore. I mean,
23 with what has happened in the last year, eight months in
24 the economy, it's just -- everything has just stopped now.

25 Q. So who was it that came up with the

1 master-planned design of the actual water system?

2 A. Mr. Moffitt.

3 Q. And does he have any background in --

4 THE COURT REPORTER: Sir, one at a time.

5 Q. BY MR. TORREY: Does he have any background in
6 designing water systems?

7 A. Not that I know. I don't think so. He is just a
8 real estate broker.

9 Q. At this point you don't have any idea how long it
10 will take to actually sell off those lots; is that
11 correct?

12 A. No, I don't.

13 MR. TORREY: Okay. Your Honor, I have no further
14 questions for Mr. MacKay at this time.

15 ALJ MARTIN: Thank you, Mr. Torrey.

16 With your indulgence for just a moment, I
17 neglected to -- prior to the beginning of testimony I
18 neglected to open it up for public comment, which is
19 something else I am required to do.

20 So at this time I would like to see if there are
21 any members of the public present who would wish to make
22 public comments at this time.

23 (No response.)

24 ALJ MARTIN: And if we could let the record
25 reflect that there are no members of the public that wish

1 to make public comment.

2

3

FURTHER EXAMINATION

4

5 BY ALJ MARTIN:

6 Q. Sorry about that. Okay. Mr. MacKay, I hope you
7 forgive me. I'm confused about how all this came about,
8 so if you will, help me walk-through this step-by-step.

9 Who are the current owners of the 120 acres?

10 A. Mr. Moffitt is. Josh Moffitt is the owner. He
11 got possession of it, and he has done the division of it.
12 And he is the sole owner of it and selling those plots.

13 But I don't know. I don't think we have gotten
14 any information about if he has sold a dozen of them yet.
15 He does keep in touch with Mr. Bales pretty often, so I
16 don't think he has sold anything.

17 Q. So -- I'm sorry. You had testified earlier that
18 you thought that he had sold 10 acres?

19 A. I thought that he had sold 10 acres to a
20 gentleman in Yuma. But that gentleman in Yuma, who we
21 contact here and there, once in a while, we just haven't
22 heard anything from him for eight months. But he has done
23 the clearing of the property. He has done work to the
24 land like he is getting ready to put a vineyard in, but we
25 had heard, actually, that he had, I believe, 7,000 plants

1 and he didn't do anything with them. He sold them to a
2 gentleman from Oregon who is a huge wine distributor
3 person in Oregon that came down and bought hundreds of
4 acres of wine land. So he bought those plants.

5 So you can only get plants once a year and put
6 them in in like April. So if you don't do it, you have to
7 wait another year. So we haven't heard anything. I can't
8 imagine anything being done with his land for -- at least
9 until 2010.

10 Q. Okay. But, to your knowledge, the current owner
11 of the 120 acres is a Mr. Josh Moffitt?

12 A. Yes.

13 Q. Where does he live?

14 A. He is in Phoenix. I don't know his exact
15 address, but he is located in Phoenix.

16 Q. Okay. And is Mr. Moffitt the individual who is
17 one of the signers of the agreement attached to the
18 application?

19 A. I think he's a signer of an easement agreement,
20 yes. And once my -- I'm pretty sure that we have an
21 addendum to that. Once -- if a CC&N is approved and
22 Wayward Winds gets the CC&N, he signs off of that and
23 Mr. Bales is the sole owner of that well.

24 Q. Okay. That was one of my questions.

25 The agreement seems to be just granting an

1 easement for the well --

2 A. Yes.

3 Q. -- at this point in time?

4 A. Yes.

5 Q. But it's your testimony that it's the intention
6 of the parties that once a CC&N is granted, that the well
7 would be sold to Mr. Bales?

8 A. Absolutely. He will have the sole ownership in
9 his name, yes. We were actually at Pioneer Title when
10 those documents were signed.

11 Q. Okay. Now, in order for the Commission to issue
12 a Certificate of Convenience and Necessity there has to be
13 a request for service from someone.

14 And this request came from Mr. Moffitt?

15 A. Yes.

16 Q. How did that come about?

17 A. He just approached Dean because, you know, Dean
18 has a lot of knowledge on the water systems and water
19 companies, and he was the only one in the area. And that
20 is what his idea was. So he got Dean directly involved
21 with it.

22 Q. Okay. Was there any kind of writing
23 memorializing the request for service?

24 A. I believe so, yeah.

25 MR. BALES: Yes.

1 THE WITNESS: That was early, early on,
2 two years. I mean, it was early on before there was even
3 a thought of going for a CC&N application. But there is
4 definitely documentation between Mr. Moffitt and
5 Mr. Bales. I know I have seen some of the stuff about
6 redoing the well. Because the well had to be completely
7 redone, and so it was at the cost of Mr. Bales to do that.

8 So the agreement there was if he was going to do
9 that, he was going to be obviously the water provider for
10 that parcel of land and that dialect went forward and then
11 it grew into this.

12 Q. BY ALJ MARTIN: Okay. So you think you can get
13 your hands on a copy of that?

14 A. I'm sure.

15 Q. That letter?

16 A. I'm sure.

17 MR. BALES: Yes.

18 Q. BY ALJ MARTIN: Because I might need to request
19 that that be filed.

20 A. Sure.

21 Q. What can the -- I know the Staff report makes
22 reference to a company called Sunizona.

23 A. Sunizona Water Company?

24 Q. Is that what it is?

25 A. It has to be the reference to that, yes.

1 Q Is that related at all to --

2 A It doesn't relate to this at all. I mean, that
3 is a business that Mr. Bales owns. It's a company that he
4 owns.

5 Q Okay.

6 A He is already a utility provider.

7 ALJ MARTIN: Now, Mr. Bales, it may be necessary
8 for you to testify just a little bit regarding your
9 experience at running a water company and that sort of
10 thing.

11 MR. BALES: Yes, ma'am.

12 ALJ MARTIN: Not right now.

13 MR. BALES: Yes, ma'am.

14 THE WITNESS: We kind of thought that.

15 Q BY ALJ MARTIN: That's all right?

16 A Oh, it's all right.

17 Q And this too, then. That's probably --

18 Mr. Bales is a certified operator for --

19 A He has an operator; YNL Technologies --

20 MR. BALES: YNL Technologies.

21 THE WITNESS: -- is their operator.

22 Q BY ALJ MARTIN: What is the name again,
23 Mr. MacKay?

24 A YNL, Y-N-L Technologies.

25 Q Okay. Thank you.

1 And that will be the certified operator for --

2 A. For Sunizona Water.

3 Q. I'm sorry. You haven't decided who will be the
4 certified operator for --

5 A. No, we haven't.

6 Q. Does Wayward Winds have a franchise agreement
7 from Cochise County to operate?

8 A. I don't believe so.

9 Q. No? Okay. And again, this is just my confusion.
10 I apologize.

11 It's Mr. Moffitt's intention to develop the
12 property. He won't himself be on any of the property that
13 he could act as the person who would sell the water to
14 whoever wants it?

15 A. No, ma'am.

16 Q. Okay. Do you know what the nearest water company
17 is to where the property is?

18 A. It would have to be Wilcox.

19 Q. Wilcox?

20 A. The town of the Wilcox.

21 Q. But it's not within the town of Wilcox and the
22 city limits?

23 A. No, ma'am. No, ma'am.

24 Q. Okay. Do you intend at any point to ever provide
25 any water for any other purposes?

1 A. No, ma'am.

2 Q. Just solely for irrigation?

3 A. Yes.

4 Q. Will there be any structures on the property,
5 barns or anything like that?

6 A. We haven't seen anything, any plat that would
7 show that, no. There are no plans for that as far as I
8 know.

9 Q. Okay. Because this is going to be nonpotable
10 irrigation water; correct?

11 A. Yeah. I mean, for irrigation purposes only, yes.

12 Q. Okay. My thing is, if you have somebody working
13 on the land, you know, and tending to the crops and they
14 want to get a drink of water, you know, there is not going
15 to be a little faucet sitting somewhere where people could
16 drink from?

17 A. No. This is all underground irrigation for
18 watering purposes.

19 Q. Okay. Now, you have read the Staff report?

20 A. Yes, I have.

21 Q. Okay. And the Staff hasn't recommended any water
22 rates. I know you had done it in your initial
23 application.

24 A. Uh-huh.

25 Q. But they haven't recommended rates for anything

1 other than one-and-a-half-inch meter for irrigation
2 purposes.

3 And this means -- you understand this means that
4 you are not to provide water to anyone for any other
5 purpose?

6 A. Yes, I do understand that.

7 Q. Okay.

8 A. No, I had actually had looked at the report and
9 was happy to see that the installation charges that they
10 recommended were higher than what we wanted.

11 Q. Yeah. So just to be clear then, that if at any
12 point in time the company wants to provide water for any
13 other purpose, they understand that they must come back to
14 the Commission before beginning any of that?

15 A. Yes, I do understand that.

16 Q. Okay. Who constructed the water system that was
17 depict in the application, the schematic?

18 A. Mr. Bales.

19 Q. Mr. Bales did. Okay.

20 And when was that done?

21 A. Probably a year ago.

22 Q. Okay. And when was the original well drilled?

23 A. Boy, the original well has to be --

24 MR. BALES: No one --

25 THE WITNESS: No one really knows. It's a long

1 time ago. We are talking about decades.

2 Q. BY ALJ MARTIN: So you think -- and I know -- you
3 don't have to know this.

4 You think Mr. Moffitt probably purchased that
5 well from somebody else?

6 A. We know he did, from a woman that lives -- she
7 owned the whole valley area, this woman, and she is on
8 some of the documentation that if you request it, we can
9 have for you.

10 Q. No. I was trying to get a feel for how old the
11 well was and why all that construction was done.

12 A. Yes. We had to completely redo it. We camera'd
13 it and tested it, everything. It's like a new well now.

14 Q. Okay. All right. Thank you.

15 And as I understand your testimony, the customers
16 that you ultimately will provide water to will own the
17 land that they are on?

18 A. Yeah. Yeah. Yes, ma'am.

19 Q. So at this point you said you haven't seen a plat
20 for anything so you don't know what the approximate size
21 of each of those parcels will be?

22 A. No. I can only go by the one we have seen. He
23 cleared five acres, and he was only going to have
24 three acres. And then he purchased an additional
25 five acres, this gentleman in Yuma -- I don't know his

1 name offhand. I can find it. But I can't -- and that is
2 the only person that we know.

3 Because at one point he was -- we were basing our
4 application on this gentleman as a customer. I mean, that
5 is how we enhanced the application to use it. And then
6 everything has just sort of -- is on freeze right now. So
7 we -- he hasn't talked to us. We don't know what is going
8 on. There could be a number of reasons.

9 MR. TORREY: Your Honor, if I could interrupt for
10 a second.

11 ALJ MARTIN: Sure.

12 MR. TORREY: If I could ask Mr. MacKay a
13 question, it might clear things up.

14 Mr. MacKay, within your application there is a
15 letter dated January 24th of 2008 from a
16 Dale and Nancy Olson.

17 THE WITNESS: That is who it is.

18 MR. TORREY: Are those the people?

19 THE WITNESS: Yeah, they are from Yuma. Yes,
20 those are the people.

21 Because his letter to us, we needed to know
22 approximately how much water he would use, so he had a
23 number of plants he would have and about how many gallons
24 per plant per month. So we used that formula.

25 I'm glad you had that because I couldn't remember

1 his name. Yes.

2 MR. TORREY: And I believe within the letter,
3 just to clarify, Mr. Olson says that he owns approximately
4 20 acres and he is going to plan for one acre of grape
5 vines in 2008 and three more in 2009.

6 THE WITNESS: That was his original plan. I
7 didn't realize that he owned 20 acres. But if it's
8 there -- he wrote that letter, so that is right.

9 MR. TORREY: I wanted to clarify whether the
10 information you had was updated from what the letter said.

11 THE WITNESS: No. Nothing more has been said.
12 That letter would be exactly -- I'm mistaken when I was
13 thinking it was 10 acres. If he says 20 acres, that is
14 what he owns then.

15 MR. TORREY: I have nothing further then.

16 ALJ MARTIN: Nothing further, Mr. Torrey?

17 MR. TORREY: No, thank you.

18 ALJ MARTIN: I do have a little quibble with your
19 question though.

20 It says, "Please be advised that on my 20 acres."
21 That doesn't necessarily mean that he owns it. It could
22 be that he is just saying, you know, on acres, the
23 20 acres that I will probably -- I'm not saying that he
24 does or he doesn't. It's just not clear to me.

25 MR. TORREY: Right.

1 ALJ MARTIN: So I think what might have to happen
2 is, as you are doing these other things that I will
3 require, maybe we could get some more clarification on
4 whether or not the land was sold and when it was
5 consummated.

6 THE WITNESS: Just to interject, the
7 infrastructure that Mr. Bales put in, actually it goes all
8 through that whole 20-acre parcel. And so, you know, I
9 don't know what Mr. Olson is going to do. For all I know
10 Mr. Olson is going to third-party sell it. I don't know
11 what Mr. Olson is thinking.

12 He is not getting back to us. We intermittently
13 sent letters to see what is going on, but like I said, you
14 can surmise what is going on, but I don't know.

15 Q. BY ALJ MARTIN: Yeah. And it's interesting.

16 Are you sending information to him in Yuma?

17 A. Is it not Yuma?

18 Q. Because the letter's address is Mesa.

19 MR. BALES: It's somewhere.

20 THE WITNESS: Wherever his letter is, that is
21 where we are sending it. I'm thinking his cell phone, I
22 think, is a Yuma area code.

23 MR. BALES: No, it's -- I'm sorry. I can't think
24 of the name of the town that he lives in.

25 ALJ MARTIN: That's okay. It's not Yuma?

1 MR. BALES: It's not Yuma. It's not very far
2 from that. At least that is what he was telling me when
3 he was talking about where he lived. I'm sure that he
4 even told me the exact town that he lived in.

5 Q BY ALJ MARTIN: Okay. And the reason I'm going
6 through all this is, again, like I mentioned about the
7 public notice, he is indeed an owner of the property, a
8 piece of the property within the requested CC&N and notice
9 will have to go to him. So before you do that, you will
10 have to clarify who actually owns some of the property.

11 A Yeah, and I think the reason -- I think -- we
12 were confused on what a customer and what a property owner
13 were. They are two different things. And I believe that
14 the Commission -- I don't know where I got it from -- that
15 we needed to contact them within an X amount of days if
16 the first customer is coming on board, et cetera. So we
17 didn't feel we had to send that certified letter;
18 although, we might have done that. I can't remember. I
19 sort of have this vision that we sent a certified letter
20 to him letting him know about this public hearing.

21 Q Well, like I said, I know in your application you
22 provided notice of the application certified --

23 A Yes.

24 Q -- to the property owners.

25 MR. BALES: Yes.

1 Q BY ALJ MARTIN: But I haven't seen anything that
2 indicates that was public -- that notice was mailed to the
3 property owners of this hearing.

4 A Okay.

5 Q You know, just like I said, just for my purposes,
6 the hoops I have to jump through.

7 A Okay.

8 Q Thank you for your understanding about that.

9 A Thank you.

10 Q And you testified that you read the Staff report;
11 correct?

12 A Yes, I have.

13 Q And you are okay with each of Staff's
14 recommendations?

15 A Absolutely, yes, I am.

16 ALJ MARTIN: Okay. Thank you very much. That is
17 all the questions I have.

18 All right. Mr. Torrey, do you have any
19 follow-up?

20 MR. TORREY: Just one point of clarification.

21

22 RECROSS-EXAMINATION

23

24 BY MR. TORREY:

25 Q Mr. MacKay, if I followed your information

1 correctly, at the time that Mr. Moffitt sells off the
2 individual lots to these owners, the individual owners
3 will be the customers of the water company; is that
4 correct?

5 A. Yes. Yes.

6 Q. Is Mr. Moffitt also going to remain as a
7 customer? Is he going to continue to retain some of the
8 land?

9 A. No. He has actually told us that he wants to get
10 rid of all of it. He will not have any kind of anything
11 to do with the well or the land. He just wants to get rid
12 of it and move on. He owns other parcels around the
13 state, and so that is what he has told us.

14 MR. TORREY: That is all, Your Honor.

15 ALJ MARTIN: Okay. Thank you, Mr. Torrey.

16 Mr. MacKay, I think unless there is something
17 else that you would like to add --

18 THE WITNESS: I don't think so.

19 ALJ MARTIN: All right. Very well. Well, then,
20 thank you very much.

21 THE WITNESS: Thank you.

22 ALJ MARTIN: And, Mr. Bales, if I could have you
23 come up to the stand for a couple questions, I would
24 appreciate it.

25 MR. BALES: Sure.

1 NARVOL D. BALES,
2 called as a witness herein on behalf of the Applicant,
3 having been first duly sworn, was examined and testified
4 as follows:

5 ALJ MARTIN: Before I start, Mr. Torrey, do you
6 have any questions of Mr. Bales?

7 MR. TORREY: Your Honor, I do have a few.
8

9 CROSS-EXAMINATION
10

11 BY MR. TORREY:

12 Q. Mr. Bales, there was some mention earlier about
13 the water system and the design of the water system.

14 Do you recall those questions that I asked
15 Mr. MacKay?

16 A. Yes.

17 Q. Was it you that put together the original designs
18 for this system and how these will be served by your water
19 company?

20 A. Yes, sir.

21 Q. Do you have any previous experience in putting
22 together water systems or designing water systems?

23 A. The only experience I have is the experience that
24 I have with Sunizona Water.

25 Q. And what is that experience?

1 A. It's a utility for the town of Sunizona and the
2 surrounding area.

3 Q. Can you briefly give us a description of the type
4 of work that you did for that company?

5 A. Well, I own the company and the tanks, if there
6 needs to be tanks put in and lines run.

7 I used to live in Carolina, and I was a licensed
8 plumber in Carolina. And I keep all my -- I do all of my
9 own work at Sunizona Water Company for the utility there.

10 Q. So the physical assembling of the plant, et
11 cetera, you have no problems with; correct?

12 A. No. No.

13 Q. The actual designing of the system in terms of
14 making sure there was adequate supply, adequate pressure,
15 all of those things, did you have any specific training in
16 that?

17 A. No, not no specific training, but I have -- this
18 is the second water system that I built in Arizona. And I
19 have never had any problems with any of them so far, you
20 know.

21 Q. In terms of the certified operator for this
22 system, I believe the testimony was that you had not
23 decided upon who that would be; is that correct?

24 A. Not at the moment, but YNL Technologies does my
25 certification for my other system.

1 Q How long would it be -- if this application were
2 to be approved by the Commission, how long would it be
3 before you knew who your certified operator would be?

4 A Immediately.

5 Q How soon immediately?

6 A All I would have to do is call YNL. I have spoke
7 to them about it, and they said they would take care of
8 it. They run all the tests and everything for me on this
9 system, and everything worked out fine for me on that.

10 Q So at this point it is your intention to hire YNL
11 Technologies?

12 A My intention now.

13 Q Does YNL serve as operator to any other water
14 system?

15 A Yes, they own a big system of their own.

16 Q And they are certified operators for that?

17 A Yes.

18 Q And they work on that system?

19 A Yes, sir.

20 Q Okay. You had a chance to review the Staff
21 report that was issued in this case; is that correct?

22 A Yes.

23 Q And Staff has recommended approval of the
24 application subject to several conditions; correct?

25 A Uh-huh. Yes, sir.

1 Q I would like to go over those conditions with you
2 just to make sure that we are on the same page, if we
3 could.

4 In the executive summary Staff had recommended
5 that if the Commission were to approve the application
6 that the company would have to charge the rates exhibited
7 in the financial and regulatory reports schedule JMM7.

8 Do you have any objection to those rates and
9 charges?

10 A No, sir.

11 Q Condition No. 2 requires that the company hire a
12 professional accounting or bookkeeping firm to maintain
13 records for Wayward Winds.

14 Do you have any objection to that requirement?

15 A No, sir.

16 Q Do you have an accountant or an accounting firm
17 in mind that handles this type of company?

18 A Well, I have spoke to a couple people that are
19 CPAs that would take care of this for me, and they have
20 not got back with me. It's pretty scary down in that area
21 with people being CPAs and such. There are people that
22 are secretaries and such as that, but I have had to -- I
23 hired an attorney in Sierra Vista to take care of my
24 other. So it's a possibility that I would have them take
25 care of my papers.

1 Q Are you familiar with the National Association of
2 Regulatory Utility Commissions, NARUC? Are you familiar
3 with that organization?

4 A No, I don't think so.

5 Q Essentially the utility business is a fairly
6 unique sort of field to be in, and the accounts and
7 bookkeeping for utilities are kept in a manner that is
8 sort of different from any other business. And the
9 accounting or bookkeeping firm that you would hire, Staff
10 would prefer that that person be certified to keep records
11 in accordance with NARUC.

12 Would that be something that the company would
13 object to?

14 A No.

15 Q And that is condition No. 3 on the Staff report.
16 So you don't object to condition No. 3; is that
17 correct?

18 A Yes, sir.

19 Q Okay. Condition No. 4 in the Staff report would
20 require the company to use the depreciation rates that are
21 accounted for in table 3 of the engineering report.

22 Would the company have any opposition to using
23 Staff's depreciation rates?

24 A No.

25 Q If you turn the page to condition No. 5, Staff

1 recommends that the company's proposed "not sufficient
2 funds charged" be reduced to \$35.

3 Is the company agreeable to that?

4 A. Yes.

5 Q. Condition No. 6 requires that the company be
6 required to notify the Commission's Utilities Division
7 within 15 days of providing service to its first customer.

8 Is that something that the company is agreeable
9 to?

10 A. Yes.

11 Q. And Staff has adjusted the cost of installation
12 for a one-and-a-half-inch meter from \$652 to \$895.

13 Does the company have an objection to that
14 increase in installation cost?

15 A. No.

16 Q. Mr. Bales, on page 3 of the Staff report on
17 the -- approximately halfway down the page under the
18 heading "other items" -- do you see that?

19 A. Number 3?

20 Q. On page No. 3 of the Staff report.

21 A. Yes. Uh-huh.

22 ALJ MARTIN: I'm sorry, Mr. Torrey. That is
23 page 3 to the financial and regulatory memorandum?

24 MR. TORREY: Yes. That's correct, Your Honor.

25 ALJ MARTIN: Okay. Thank you.

1 Q. BY MR. TORREY: In that section Staff was
2 recommending or suggesting that the company -- that
3 Wayward Winds use the same accounting or bookkeeping firm
4 that your other company, Sunizona, is currently using?

5 Is that a suggestion you would be willing to
6 consider?

7 A. Sure.

8 MR. TORREY: Okay. Your Honor, I have no further
9 questions for Mr. Bales.

10 ALJ MARTIN: Thank you, Mr. Torrey.

11

12

EXAMINATION

13

14 BY ALJ MARTIN:

15 Q. I have a couple.

16 You said you operate and you own the water system
17 for Sunizona.

18 Now, is Sunizona a township or municipality or
19 just -- how is that, the area, I mean?

20 A. It's just a small residential area.

21 Q. It's not incorporated in any way?

22 A. No. No. There is one business there.

23 Q. Okay. And so you are operating Sunizona Water
24 Company under a CC&N from the Commission?

25 A. Yes, ma'am.

1 ALJ MARTIN: Thank you very much.

2 Mr. Torrey, anything else?

3 MR. TORREY: No, Your Honor.

4 ALJ MARTIN: All right. Mr. Bales, is there
5 anything that you would like to add?

6 THE WITNESS: No. I think we covered it all.

7 ALJ MARTIN: So you are sick of us; right?

8 THE WITNESS: No. No.

9 ALJ MARTIN: Okay. Thank you very much, sir.

10 Mr. Bales, is there anybody else that you would
11 like to have testify on behalf of the company?

12 MR. BALES: No, ma'am.

13 ALJ MARTIN: Okay. Thank you.

14 MR. BALES: Thank you.

15 ALJ MARTIN: Okay. Very well. Mr. Torrey, is
16 Staff ready?

17 MR. TORREY: Staff is ready.

18 ALJ MARTIN: Okay. Go ahead and call your first
19 witness.

20 MR. TORREY: Thank you, Your Honor. Staff calls
21 Ms. Dorothy Hains.

22 ALJ MARTIN: Thank you.

23

24

25

(Next page, please.)

1 DOROTHY HAINS,
2 called as a witness herein on behalf of Staff, having been
3 first duly sworn, was examined and testified as follows:

4

5 DIRECT EXAMINATION

6

7 BY MR. TORREY:

8 Q. Good morning, Ms. Hains.

9 Would you state your full name and business
10 address for the record, please.

11 A. My name is Dorothy Hains, and my address --
12 business address is 1200 West Washington, Phoenix, Arizona
13 85007.

14 Q. Is your microphone on?

15 A. Okay.

16 Q. And you're employed by the Corporation
17 Commission; is that correct?

18 A. Correct.

19 Q. And how long have you been with the Arizona
20 Corporation Commission?

21 A. I have worked for the department for more than
22 ten years.

23 Q. And you have been an engineer the entire time;
24 correct?

25 A. Correct.

1 Q. And primarily what type of cases do you work on
2 as an engineer?

3 A. What kind of cases? I have been working for the
4 rate case, financing case, and the complaint case, CC&N
5 extension -- new and extension cases.

6 Q. In conjunction with the application of Wayward
7 Winds, were you asked to review or make an engineering
8 review of the proposed water system?

9 A. Yes, I did.

10 Q. And did you do an on-site visit to that location?

11 A. Yes, I did.

12 Q. And can you briefly describe for us what you did
13 on your on-site visit?

14 A. We went there checking out the system and observe
15 the system. It already had a well and storage tank,
16 pressure tank and booster pumps there and power meter not
17 installed. So the system is not running.

18 And Mr. Bales and David took us to see the
19 requested service area. Yes, there is kind of like a
20 service connection being installed, but there is no meter
21 setting up in those set of lots.

22 Q. Have you had a chance to review the proposed
23 plans to service that 120-acre parcel?

24 A. There are no plans. There is just a drawing, and
25 so that is why the critical field inspection is needed.

1 Q. Okay. Based upon your observations and your
2 professional experience, do you believe that the proposed
3 method of serving these 120 parcels is a viable proposal?

4 A. Yes.

5 Q. Do you believe that the company has the technical
6 capability to provide water service to these parcels?

7 A. I will say yes, but -- if this is just for the
8 irrigation customers, yes, I don't think there is much
9 problem, but then for the lands, if they go expanding
10 irrigation customers, then it has to be divided to the
11 subdivision type of residential or commercial customers,
12 then this system needs to do more upgrade to meet that
13 kind of standard.

14 Q. So is it correct to say that the system is viable
15 for irrigation purposes only but not for residential?

16 A. Yes, you can say that.

17 Q. If this company were to be begin to service any
18 sort of residential customer at all, do you believe that
19 the system would be able to support that particular
20 customer?

21 A. It's hard to say because right now the company
22 only did the quality test for irrigation use purposes.
23 And it does not meet safe drinking water request. And
24 further, we didn't -- because the purpose of this water
25 company is for irrigation use only, we did not put a

1 condition to request company file approval of construction
2 and approval to construct issued by ADEQ.

3 So system, by what we observed, can run for the
4 irrigation use only, but it may not be suited for drinking
5 water use and other light or heavy customer use.

6 Q. So in the event -- you heard the testimony that
7 the current owner, Mr. Moffitt, is not -- it's not
8 guaranteed that these lots will develop strictly into
9 vineyards.

10 Do you recall that testimony?

11 A. Yes, that is why I feel that our report may not
12 be complete.

13 Q. In the event that Mr. Moffitt chooses an
14 alternative and includes residential or intends to include
15 residential services within his -- within this 120-acre
16 plot, what steps would you believe are appropriate for the
17 company to take to get permission to serve those types of
18 customers?

19 A. Company should come in to our department and also
20 go to ADEQ, taking necessary action to upgrading the
21 system to meet the current standards.

22 Q. Do you believe that there should be any type of
23 requirement on behalf of the company to get permission or
24 to seek, in some sort of an application before this
25 Commission, permission to serve residential customers

1 before they undertake to serve residential customers?

2 A. Yes. And beyond that because of looking at the
3 service line and meter installation, we are only setting
4 one-half meter. For residential that is too big.

5 So we didn't -- I mean, we didn't reclassify to
6 small meters for that kind of purposes.

7 So yes, when company receiving the service from
8 residential requests, this, the tariff, needs to be
9 updated and their service plans or system needs to be
10 updated.

11 Q. On the stand before you do you see a document
12 that is marked S-1 for identification purposes?

13 A. Yes.

14 Q. Can you identify that document for us?

15 A. It's the Staff report for the application of
16 Wayward Winds for a CC&N application.

17 Q. And the final three pages of that document are an
18 Attachment C; is that correct?

19 A. Yes.

20 Q. And then just prior to Attachment C there is
21 approximately five pages of an Attachment B; is that
22 correct?

23 A. Yes.

24 Q. Can you identify Attachment B for the record?

25 A. Attachment B is engineering report for this

1 application.

2 Q. And who prepared that?

3 A. I did -- oh, yes, I did.

4 Q. And if I were to ask you questions on the stand
5 today to illicit information that appears in Attachment B,
6 would your answers be the same or substantially similar to
7 the way the information appears in the Attachment B?

8 A. If company will be maintaining only irrigation
9 facility, then this report will be -- still exist. But if
10 company expanding their service area to including
11 residential and commercial customers in, then more
12 conditions should be added into here.

13 Q. Are there any additions or corrections to
14 Attachment B that you believe you need to make on the
15 stand today?

16 A. If we were including residential customers and
17 commercial customers in there, then, yes, there has --
18 additional modifications should be put in, but, if not,
19 no, it should be stay as it is.

20 Q. So since the application today is strictly for
21 irrigation purposes, do you believe that the Attachment B
22 is complete?

23 A. Yes.

24 MR. TORREY: Your Honor, I have no further
25 questions for Ms. Hains.

1 ALJ MARTIN: Okay. Mr. Bales or Mr. MacKay, do
2 you have any questions for Ms. Hains?

3 MR. BALES: No.

4 ALJ MARTIN: Ms. Hains, I have one.

5

6

EXAMINATION

7

8 BY ALJ MARTIN:

9 Q. On page 2 of your report, table 1, note No. 1,
10 you state -- you list a number of invoices for repairs for
11 the well, and you state company failed to include these
12 expenses in its application. Staff believes that these
13 expenses should have been included in the application and
14 recommends that they be included in the well account.

15 Could you explain a little bit as to why you
16 thought those should be included in the plant?

17 A. Those invoices coming after the application was
18 submitted. And I evaluated those invoices and seen what
19 it was for, and then looking, those are well-upgrading
20 uses -- I mean, the expense there. And since the company
21 already paid for that, then this should be moved into the
22 well account for rate design purposes, I guess.

23 ALJ MARTIN: Okay. I have no other questions.

24 Mr. Torrey, any follow-up?

25 MR. TORREY: None, Your Honor.

1 ALJ MARTIN: Thank you, Ms. Hains.

2 Off the record.

3 (Discussion off the record.)

4 ALJ MARTIN: Back on the record.

5 Mr. Torrey, do you want to call your next
6 witness?

7 MR. TORREY: Thank you, Your Honor. Staff calls
8 Mr. Jeff Michlik.

9

10 JEFFREY M. MICHLIK,
11 called as a witness herein on behalf of Staff, having been
12 first duly sworn, was examined and testified as follows:

13

14 DIRECT EXAMINATION

15

16 BY MR. TORREY:

17 Q Mr. Michlik, could you state your full name and
18 business address for the record, please.

19 A Sure. My name is Jeffrey M. Michlik,
20 M-i-c-h-l-i-k. I'm employed by the Arizona Corporation
21 Commission as a financial analyst. My business address is
22 1200 West Washington Street, Phoenix, Arizona 85012 --
23 85007.

24 ALJ MARTIN: Close.

25 Q BY MR. TORREY: Are you sure of that?

1 A. Yeah, it's 85007.

2 Q. Now, how long have you been with the Commission,
3 Mr. Michlik?

4 A. A little over two and a half years.

5 Q. And what is your educational background?

6 A. I have a degree in accounting and finance, dual
7 bachelor degrees from Idaho State University.

8 Q. Now, in conjunction with the application of
9 Wayward Winds that we are hearing testimony on today, did
10 you conduct an analysis of the company's financial
11 ability?

12 A. Yes, I was assigned this case.

13 Q. And on the stand in front of you do you have an
14 exhibit that has been identified as the Staff report?

15 A. Yes.

16 Q. And that Staff report, can you turn to
17 approximately eight pages back? It's Attachment A.

18 A. Yes. Okay.

19 Q. And can you identify Attachment A of the Staff
20 report?

21 A. Yes. This is my memo and schedules that I sent
22 to Kiana Sears, who is actually the lead on the CC&N case.

23 Q. And then the memorandum and the schedules, were
24 those prepared directly by you or under your direct
25 supervision?

1 A. Yes.

2 Q. Now, if I were to ask you information on the
3 stand today to illicit information regarding the Wayward
4 Winds application, would your answers be either the same
5 or similar to the way they appear in Attachment A?

6 A. Yes.

7 Q. In Attachment A, is there a correction that you
8 believe needs to be made on the stand today?

9 A. Not on mine, but the amount -- the total amount
10 year five should be 54,398.

11 Q. Let me stop you for one second, Mr. Michlik. If
12 I could get you to turn to schedule JMM2.

13 A. Yes.

14 Q. The column furthest to the right, plant total
15 year five, the number all the way at the bottom under
16 account number is 348?

17 A. Yes.

18 Q. Could you please give us the figure in that box?

19 A. 54,398.

20 Q. Now, is that the correct number for that account?

21 A. Yes.

22 Q. And within the executive summary on page 1 of the
23 executive summary, I will direct your attention to the
24 third paragraph, and there is a company's estimated total
25 cost of \$51,654; do you see that section?

1 A. Yes.

2 Q. Is that correct?

3 A. No.

4 Q. And what is the correction that needs to be made?

5 A. It should be \$54,398.

6 Q. So the number \$51,654 in the executive summary
7 should be replaced with the figure that appears in JMM2;
8 correct?

9 A. Correct.

10 Q. Could you give us a brief summary of your
11 findings regarding the financial health and projections
12 for this company?

13 A. Again, this is a projection so, you know, we are
14 really not sure if the company after five years will have
15 three customers or one customer or five customers. We
16 really don't know at this point.

17 What we do know is they did provide us with
18 invoices. And like other CC&Ns, when they estimate the
19 plant will be added second year or third year, in this
20 case most of the plant is already out in the ground. And
21 I also went out along on the field inspection with
22 Dorothy, and I went there and answered some accounting
23 questions David MacKay had.

24 So we have, you know -- the value of plant, that,
25 you know, we actually have invoices, so there is no

1 estimate there.

2 Q. So one of the recommendations in the executive
3 summary, recommendation No. 7, was to adjust the cost of
4 the one-and-a-half-inch meter from \$653 to \$895.

5 Was that your recommendation?

6 A. That's based on engineering, but it's included in
7 my schedule.

8 Q. Is there anything -- is there anything about
9 Attachment A that you feel needs to be clarified or
10 explained on the stand today?

11 A. No.

12 Q. And, to the best of your knowledge, are all of
13 the schedules -- JMM1, 2, 3 -- JMM1 through 7, are those
14 true and accurate, to the best of your knowledge?

15 A. Yes.

16 MR. TORREY: Your Honor, I have no further
17 questions for Mr. Michlik.

18 ALJ MARTIN: Thank you, Mr. Torrey.

19 Mr. Bales or Mr. MacKay, do you have any
20 questions for Mr. Michlik?

21 MR. BALES: No.

22 ALJ MARTIN: I have some.

23

24

(Next page, please.)

25

1

EXAMINATION

2

3 BY ALJ MARTIN:

4 Q The amount of construction was the 51-and-change
5 figure first, and then the 54-and-change figure came from
6 what, if you could expand on that?

7 A It's actually -- if you look at schedule JMM2,
8 account No. 334 meters, AIAC, these were figures that I
9 got from the company's CPA firm that they hired, and that
10 is their original application. So these are projections
11 that I got and I plugged in.

12 So I guess this part would be estimated. The
13 cost in year one, that has all been verified by invoices.

14 Q Okay. And the AIAC on the meters, that is for
15 the three meters, the anticipated three meters?

16 A Right.

17 Q And if you could -- I apologize because I know
18 it's in here -- but could you discuss a little bit how you
19 arrived at the company's fair value rate base, if you
20 could? Could you explain that just a little bit for the
21 record?

22 A Are you referring to schedule 1?

23 Q Yes.

24 A Okay. Sure. Column -- year five column at the
25 bottom, what we do is we come up with value of the plant

1 and service. We take out the accumulated depreciation.
2 We take out the net advances and aid of construction. We
3 add in purchase power. And then we add in one-eighth of
4 operating and maintenance expenses, and we come up with an
5 original cost of rate base of \$37,333. And then our rate
6 of return off the operating revenue we come up with
7 9.33 percent.

8 Typically what we want to do is project 8 percent
9 or higher.

10 A little bit of background, in the previous case
11 the company hired a CPA firm, and at the end of year five
12 they had a negative rate of return. We told him, no, we
13 can't do that so go out and hire another CPA and come up
14 with a better rate.

15 Q. Okay. And correct me if I'm wrong. Typically
16 when we see a schedule like this, there is a comparison
17 between what Staff is recommending against what the
18 company is proposing.

19 Is there a reason I'm not seeing information here
20 on what the Staff has proposed in this regard? Unless I'm
21 wrong and I'm making it up.

22 A. Usually in CC&N cases we don't. If this was like
23 a regular rate case, we would.

24 Q. Okay. And then on page 2 of your report under
25 revenue expenses in the first paragraph --

1 A. Yes.

2 Q. -- you state, "Staff also removed the \$90 service
3 charge per customer from other operating revenue."

4 You are talking about the company's?

5 A. Yeah, the application that the CPA firm prepared
6 for the company.

7 Q. Okay. And they had included it in their other
8 operating revenue?

9 A. Basically what we do, is we are putting it
10 actually \$5 higher.

11 I think on page 7 -- or schedule 7 page 1 of 2,
12 the monthly minimum charge is \$95. We kind of removed it
13 from there and put it into operating revenue.

14 Q. Okay. And then just for purposes of the record,
15 on page 3 where you talk about the rate design, you state
16 that Staff believes it's improper to recommend rates for
17 other customer classes, and you explain that a little bit.

18 Could you go into more detail as to why you think
19 it's right?

20 A. Sure. Because when I actually went on the
21 original site visit with Dorothy, our engineer, there was
22 some talk about putting a subdivision in. The problem is,
23 if we put a subdivision -- if they are putting in a
24 subdivision, we really don't know what the build out is
25 going to be. So if we do recommend rates for that, there

1 is a chance that the company could be over earning. If
2 they are over earning, they will never come back in.

3 And that has happened in a few cases in the past.
4 And then what happens is in about 20 years when they
5 finally have to come in, then the customer is in rate
6 shock and we have to adjust the rates upward.

7 But there is a chance that the company, if we set
8 rates for other customers besides the irrigation
9 customers, that the company could be over earning, and
10 they would never want to come back and file a rate case.

11 Q But you heard Ms. Hains' testimony, that she
12 thought it should be a condition of the CC&N that if they
13 wanted to add, for example, residential customers or
14 commercial customers, that they would be required to come
15 back to the Commission?

16 A Oh, I definitely agree with that. Definitely, so
17 we can actually analyze that and see how much the
18 residential customers, how much revenue they will produce,
19 what kind of expenses they will produce.

20 There also might be more plant equipment. There
21 could be capacity issues. There could be financing issues
22 associated with taking a loan from WIFA.

23 So I definitely agree with that statement.

24 Q Okay. Very well.

25 I'm sorry, I don't know what page it was on, but

1 you stated that because the company was a sole
2 proprietorship, the income tax would pass through to the
3 owner?

4 A. Right.

5 Q. So there wouldn't be that calculation.

6 But you heard Mr. Bales testify that the company,
7 when the CC&N is approved, the company would, instead of
8 having easement for the well, actually own the well.

9 So should the company be required to file an
10 affidavit with its annual report regarding its property
11 taxes once it owns it?

12 A. Yeah, once they own it, they will get a statement
13 from the Cochise County Treasurer's Office, and there
14 would be property taxes on that. And then they should
15 include that with their annual report.

16 MR. BALES: Sure. Sure.

17 ALJ MARTIN: That is all the questions I have.

18 Mr. Torrey, any follow-up?

19 MR. TORREY: No, Your Honor.

20 ALJ MARTIN: All right. Thank you.

21 Mr. Bales or Mr. MacKay, any questions?

22 MR. MACKAY: No.

23 ALJ MARTIN: Okay. Thank you, Mr. Michlik.

24 Mr. Torrey, are you ready for your next witness?

25 MR. TORREY: Thank you, Your Honor. Staff calls

1 Ms. Kiana Sears.

2

3

KIANA MARIA SEARS,

4 called as a witness herein on behalf of Staff, having been
5 first duly sworn, was examined and testified as follows:

6

7

DIRECT EXAMINATION

8

9 BY MR. TORREY:

10 Q Ms. Sears, could you state your full name and
11 business address for the record, please.

12 A It's Kiana Maria Sears, 1200 West Washington,
13 Phoenix, Arizona 85007.

14 Q And you're employed by the Corporation
15 Commission; is that correct?

16 A Yes, I am.

17 Q And in what capacity?

18 A As an Executive Consultant I.

19 Q And how long have you been with the Commission?

20 A One year.

21 Q And did you have any utility experience prior to
22 working for the Commission?

23 A Not at all.

24 Q Okay. Now, in conjunction with the application
25 of Wayward Winds, that we are taking testimony on today,

1 did you supervise the production of the Staff report?

2 A. Yes, I did.

3 Q. And on the stand in front of you is an exhibit
4 that was marked S-1 for identification purposes.

5 Is that the Staff report that you supervised?

6 A. Yes, it is.

7 Q. Turning to approximately the fifth page of that
8 is the executive summary.

9 Do you see that?

10 A. Yes, I do.

11 Q. And did you prepare that executive summary?

12 A. Yes, I did.

13 Q. If I were to ask you questions today to illicit
14 any information that is in the Staff report, would your
15 answers be the same or substantially similar to the way
16 they appear in the Staff report?

17 A. Yes, they would, with the amendment that
18 Mr. Michlik made in regard to the estimated total costs,
19 where he made the correction from the 51,654 to 54,398 for
20 the total cost.

21 Q. Okay. Now, if that 51,000 figure is corrected,
22 will the executive summary then be complete and accurate,
23 to the best of your knowledge?

24 A. Yes, it would.

25 Q. If could I direct your attention to the final

1 three pages of the Staff report, Attachment C; do you see
2 those?

3 A. Yes.

4 Q. Can you identify Attachment C?

5 A. Attachment C is the legal description and the map
6 prepared by Staff.

7 Q. You did not personally prepare Attachment C;
8 correct?

9 A. That's correct.

10 Q. Are you on the stand willing to adopt the
11 testimony or the exhibit, Attachment C, as your testimony
12 for the record today?

13 A. Yes, I will.

14 Q. And so are you able to say that you believe that
15 Attachment C is true and correct, to the best of your
16 knowledge?

17 A. Yes, I do.

18 Q. Is there anything else about the Staff report
19 that you feel needs to be clarified or explained here on
20 the stand today?

21 A. Yes. Along the same lines with that cost
22 analysis that was corrected, on page 1 of my Staff report
23 under cost analysis, the same figure that I spoke of
24 before, appears the 51,654; that needs to be also amended
25 to reflect 54,398.

1 Q Is there anything that you believe needs to be
2 corrected or explained further today?

3 A No, sir.

4 MR. TORREY: Your Honor, Staff moves to admit
5 exhibit S-1 for the record.

6 ALJ MARTIN: Thank you.

7 Mr. Bales and Mr. MacKay, do you have any
8 objections to Staff Exhibit S-1 of the Staff report being
9 introduced into testimony today?

10 MR. BALES: I don't.

11 ALJ MARTIN: Okay. So admitted.

12 (Whereupon, Exhibit S-1 was admitted into
13 evidence.)

14 MR. TORREY: And, Your Honor, Ms. Sears is
15 available for cross-examination.

16 ALJ MARTIN: Do you have any questions for
17 Ms. Sears?

18 MR. MACKAY: No.

19 ALJ MARTIN: I have a couple.

20

21

EXAMINATION

22

23 BY ALJ MARTIN:

24 Q On page 2 of the Staff report under conclusions
25 and recommendations, it says, "Based on documented demand

1 for services in requested area."

2 What documents did you rely on for that
3 conclusion?

4 A. We received -- I looked at the letter that they
5 submitted.

6 Q. Is that the letter from the Olsons in the
7 application?

8 A. Yes, ma'am.

9 Q. Okay. Anything else?

10 A. No, ma'am.

11 Q. So you didn't have documentation at the time
12 regarding the other 100 acres as a request for service?

13 A. I only knew about the dialogue. I have spoken to
14 Mr. Bales and Mr. MacKay during the time when they were
15 making that. So I only had the oral/verbal dialogue of
16 that over the phone regarding it.

17 Q. Okay. Thank you.

18 And then I had asked -- you heard Mr. MacKay's
19 testimony that he did not believe that Wayward Winds has a
20 franchise agreement from Cochise County?

21 A. Yes.

22 Q. Do you have an opinion as to whether or not the
23 Commission should require that as a condition or is there
24 a reason that one isn't required in this instance?

25 A. I don't have a specific reason, but I'm thinking,

1 Cochise County --

2 Your Honor, I can follow up on that, but I'm not
3 certain.

4 MR. MACKAY: I don't think it's required in
5 Cochise county. I don't know that for a fact, but --

6 Q. BY ALJ MARTIN: Okay. Then, yes, I will require
7 clarification from Staff as to whether or not one is
8 required.

9 A. Yes.

10 Q. If it is required, then I will need a
11 recommendation one way or another whether it's a condition
12 of a CC&N or an order preliminary.

13 A. Yes. Yes.

14 Q. I think I will have to require that afterwards.

15 A. Okay.

16 ALJ MARTIN: Okay. I believe that is all the
17 questions I have for you.

18 Mr. Torrey, any follow-up?

19 MR. TORREY: Your Honor, I have no questions for
20 Ms. Sears.

21 ALJ MARTIN: Okay. Mr. Bales or Mr. MacKay,
22 anything else?

23 MR. MACKAY: No, I don't have anything.

24 ALJ MARTIN: Ms. Sears, thank you very much.

25 THE WITNESS: Thank you.

1 ALJ MARTIN: Yes, Mr. Torrey.

2 MR. TORREY: Yes, Your Honor. It may shed a
3 little bit of light to ask if we could ask Mr. Bales if
4 his other company, Sunizona, has a franchise agreement
5 with the County.

6 ALJ MARTIN: You don't need to come back up to
7 the stand, Mr. Bales, but I will remind you that you are
8 under oath. And if you could, make sure your little green
9 light is shining on the microphone.

10

11 NARVOL D. BALES,

12 recalled as a witness on behalf of the Applicant, having
13 been previously duly sworn, was examined and testified as
14 follows:

15

16 RECROSS-EXAMINATION

17

18 BY MR. TORREY:

19 Q. Mr. Bales, your other company, Sunizona Water,
20 does that operate in Cochise county?

21 A. Yes.

22 Q. Do you have a franchise agreement with the County
23 for Sunizona Water?

24 A. For taxes, you mean, and such?

25 Q. An agreement with the County that you're allowed

1 to operate that system within the county?

2 A. Well, see, the company was already there before I
3 ever moved there, and it's been -- I think that company
4 has been there since the '30s.

5 Q. But at the time you either purchased the company
6 or took over the company, there should have been some sort
7 of document.

8 A. A license?

9 Q. I guess you could call it a license.

10 A. Yes, I have that. I have that.

11 ALJ MARTIN: Excuse me, Mr. Torrey. He might be
12 thinking of a business license.

13 MR. MACKAY: That is what he is thinking of.

14 MR. TORREY: Okay.

15 ALJ MARTIN: Yeah, I don't think it's clear.

16 MR. TORREY: And I'm not sure if I can clarify
17 that, Your Honor.

18 ALJ MARTIN: And I have no idea.

19 MR. MACKAY: That is actually something we can
20 call and ask about.

21 ALJ MARTIN: And I understand, and that is fine.
22 But because this is somewhat of a legal issue for the
23 Commission, I think I will have Staff address that issue.

24 MR. MACKAY: Okay.

25 ALJ MARTIN: Okay. I'm sorry.

1 MR. TORREY: Your Honor, maybe we could call back
2 to Phoenix and ask and have someone check to see
3 whether -- we might be able to get that information within
4 short order, if we could take a few-minute break.

5 ALJ MARTIN: Okay. We will take a ten-minute
6 break, and you can call in that time. We will come back
7 here about 11:40 on that clock.

8 (Whereupon, a recess was taken from 11:30 a.m.
9 until 11:49 a.m.)

10 ALJ MARTIN: Okay. Let's go back on the record.
11 Mr. Torrey.

12 MR. TORREY: Your Honor, we have some information
13 for you. I believe Ms. Sears will be the appropriate
14 person to provide that.

15 ALJ MARTIN: Okay. Ms. Sears, if you would
16 please come on up. You are still under oath.

17

18 KIANA MARIA SEARS,
19 recalled as a witness herein appearing on behalf of Staff,
20 having been previously duly sworn, was examined and
21 testified as follows:

22

23 (Next page, please)

24

25

1

REDIRECT EXAMINATION

2

3 BY MR. TORREY:

4 Q Ms. Sears, during the break did you do some
5 research into the franchise agreement between Cochise
6 County?

7 A Yes, I did.

8 Q Can you tell us what you found out?

9 A Yes. With the review of this application the
10 franchise agreement wasn't looked at. We were looking at
11 the standpoint from irrigation. If it's strictly an
12 irrigation application, which we are judging it to be on
13 face value currently, they will not need the franchise
14 agreement.

15 But I'm saying if they do come back and do all
16 the necessary things that we would require, if it's going
17 to be subdivided and be residential, then they will have
18 to have a franchise agreement.

19 ALJ MARTIN: Any other questions, Mr. Torrey?

20 MR. TORREY: No, Your Honor.

21

22

FURTHER EXAMINATION

23

24 BY ALJ MARTIN:

25 Q Is this not requiring a franchise agreement for

1 purposes of irrigation, do you know if that is per statute
2 or regulation or what is the authority for that?

3 A. Currently as far as the irrigation and those kind
4 of customers, the Corporation Commission itself only has
5 one customer that does that.

6 Q. Say that again.

7 A. I know we only have one company that we are even
8 regulating with irrigation at this time. But I could
9 probably defer to Dorothy to get a little more information
10 regarding that.

11 Q. Okay. All right. Thank you.

12 ALJ MARTIN: Do you have a follow-up, Mr. Torrey?

13 MR. TORREY: I don't, Your Honor, but if you have
14 any more questions --

15 ALJ MARTIN: Just a question of you, Mr. Torrey,
16 as legal authority.

17 Did the folks you talked to apprise you of where
18 that came from?

19 MR. TORREY: Your Honor, actually Ms. Sears found
20 the information. I was speaking with Ms. Battista to see
21 if this company -- if Sunizona had a franchise agreement,
22 and there is no record of a previous franchise agreement
23 for that company.

24 ALJ MARTIN: So we won't deal with that.

25 MR. TORREY: So we couldn't make the tie.

1 If Sunizona had a franchise agreement, then it
2 would have led me to believe this company would also need
3 a franchise agreement with Cochise County.

4 *Q.* BY ALJ MARTIN: Well, it's not whether or not
5 Cochise requires one; it's that the Commission does not
6 require one for irrigation, period, no matter what county
7 you are in? Is that correct, Ms. Sears?

8 *A.* I could probably get further clarification from
9 our engineer. I would like to ask a little bit more
10 information on that.

11 MS. HAINS: Huh-uh.

12 ALJ MARTIN: Well, should we give her a shot,
13 though?

14 All right. Ms. Sears, thank you very much.

15 You know, I'm sorry to have to do this. I think
16 I will require a late-filed exhibit with some sort of --
17 whether it's just policy, whether it's through the Arizona
18 Administrative Code or through statute, that for
19 irrigation -- for a company that wants to provide
20 irrigation of crops only, that the franchise agreement is
21 not required. Or again, you know, if you find it is
22 Cochise County or whatever, whatever the authority is for
23 this assertion, I will need some verification of that.

24 And I will be issuing a procedural order that
25 will have it in it.

1 I'm sorry. Do you have any other witnesses you
2 need to call?

3 MR. TORREY: I don't, Your Honor.

4 ALJ MARTIN: Let me ask first if there are any
5 closing statements that you would like to make, Mr. Bales
6 or Mr. MacKay, as you are sitting here shell shocked?

7 MR. MACKAY: Well, the only thing, this was
8 brought up earlier, about this application is strictly for
9 irrigation, but hypothetically if this went to
10 subdivision, you just have to redo this whole process
11 again? Is that what that means?

12 ALJ MARTIN: Yes.

13 MR. MACKAY: Like for a CC&N for residential, in
14 other words?

15 ALJ MARTIN: No, it's not a -- it's just, as I
16 understand it -- maybe Staff could correct me if I'm
17 wrong -- it's just a change. You have to file a different
18 tariff to add residential customers.

19 MR. MACKAY: And I understand that.

20 ALJ MARTIN: But they would also have to look at
21 what the technical capabilities of the system are and
22 whether or not the company has the financial wherewithal
23 to support residential. But if that is incorrect, perhaps
24 Mr. Torrey --

25 Is there anything else?

1 MR. MACKAY: No. The only reason I ask that is
2 because this well has gone through all the testing with
3 ADEQ and everything as far as safe drinking water and
4 everything, and all the tests are done and paid for.

5 But I don't see that ever happening, just in
6 case.

7 ALJ MARTIN: Yeah, I mean -- and if you want to
8 provide water to a residential community, there are great
9 many hoops to jump through.

10 MR. MACKAY: Okay.

11 ALJ MARTIN: Mr. Torrey, any closing remarks?

12 MR. TORREY: Your Honor, as I think we have tried
13 to get across, the application is strictly for irrigation.
14 That is the lens that Staff looked at this application
15 through. Staff does recommend approval for irrigation
16 only.

17 As Ms. Hains clarified, if the company does
18 decide to provide residential service or if the current
19 owner decides to make this a residential project, then
20 Staff is going to have to reevaluate a great many things,
21 not only the financial aspect, but the system itself. As
22 Ms. Hains says, the demand may be different and the
23 infrastructure will be different.

24 Speaking to the company's concern, yes, they
25 would still have their CC&N and they would still have the

1 right to serve in a protected area, but it would require a
2 modification of the tariff. But in order to do that,
3 there would be such a significant change for this new
4 residential class of customers, Staff would have to
5 eventually have a hearing, that basically models a rate
6 case, to make sure that all of the requirements were met.

7 So with that, Staff does recommend approval of
8 the application, but it should be specifically noted that
9 in the event that the company does intend to serve
10 residential customers, that the company should have to
11 notify the Commission and make an appropriate application
12 for a modification of their tariff.

13 ALJ MARTIN: All right. Thank you.

14 I have admitted into evidence Staff's report as
15 Exhibit S-1. And I will be keeping the record open
16 pending filing of certain exhibits necessary which will be
17 addressed in the procedural order.

18 Specifically, Mr. Bales and Mr. MacKay, two
19 things I see I will be asking for: One is copies of the
20 documents that we talked about requesting services from
21 Mr. Moffitt.

22 MR. MACKAY: Yes.

23 ALJ MARTIN: And then the public notice issue
24 that we talked about.

25 MR. MACKAY: Yes.

1 ALJ MARTIN: And then from Staff just the
2 authority for the assertion about the irrigation not
3 needing a franchise agreement. I think that will be
4 interesting information for us to have.

5 MR. TORREY: And for me as well.

6 ALJ MARTIN: Pardon?

7 MR. TORREY: And for me as well, Your Honor.

8 ALJ MARTIN: Okay. Very well.

9 If there are no other issues that need to be
10 discussed, this concludes the hearing, and as I mentioned,
11 the record will remain open pending receipt of requested
12 information and then ultimately submission of a
13 Recommended Opinion and Order to the Commission.

14 Thank you very much, everyone, and we will go off
15 the record.

16 (Whereupon, the hearing concluded at 11:57 a.m.)

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1 STATE OF ARIZONA.)
) ss.
 2 COUNTY OF MARICOPA)

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I, KATE E. BAUMGARTH, RPR, Certified Reporter
 No. 50582, for the State of Arizona, do hereby certify
 that the foregoing printed pages constitute a full, and
 accurate transcript of the proceedings had in the
 foregoing matter, all done to the best of my skill and
 ability.

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WITNESS my hand this 30th day of January, 2009.

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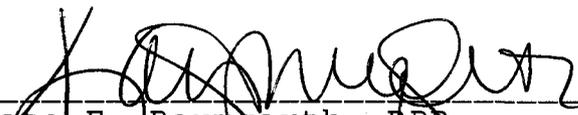
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 Kate E. Baumgarth, RPR
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